



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 6, 1998

Mr. Ray Farabee
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2981

OR98-2631

Dear Mr. Farabee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 119392.

The University of Texas System's Office of General Counsel received a request for copies of "all your and UT-System notes, records, and communications relating to or concerning INITIATE!!'s requests, including any instructions not to disclose information." You advise that the requestor has "filed numerous public information requests" directed to various parts of the University of Texas System, and that "[m]any of these requests have been the basis for rulings by your office."

You say that your office has no objection to furnishing the requestor with your formal requests for a decision from this office, but claim that most of the requested information is subject to the attorney-client, work product, and party communication privileges." You seek to withhold such information under sections 552.101, 552.103, 552.107 and/or 552.111 of the Government Code. You have submitted representative samples of the information at issue.¹

¹In reaching our conclusion, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

The attorney-client privilege is incorporated in section 552.107(1), which protects information "that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct." In instances where an attorney represents a governmental entity, the attorney-client privilege protects an attorney's legal advice and information or requests for advice communicated from the client to the attorney. Factual communications from the attorney to the client are not protected under section 552.107(1). Open Records Decision No. 574 (1990). We have indicated material which you may withhold under section 552.107(1).

You claim the protection of section 552.103(a) for "those documents responsive to this request which relate to the Austin Software Council Litigation." Section 552.103(a) excepts from required disclosure information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The only document you submitted which appears to relate to the litigation you reference, we have already permitted you to withhold under section 552.107(a) as discussed above.² None of the other documents you submitted appear to be litigation-related. Thus none of the information you submitted may be withheld under section 552.103(a).

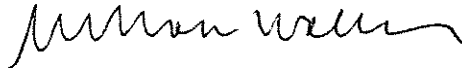
Your section 552.101 claim appears to be in effect a claim under the "work product" or "attorney-client" privileges. We have already dealt with your attorney-client privilege claim under section under section 552.107(1). "Work product," generally treated under section 552.103 or 552.111, must have been prepared in anticipation of litigation. Open Records Decision No.647 (1996) citing *National Tank Co. v. Brotherton*, 851 S.W. 2d 193 (Tex. 1993). Again, the only litigation-related document in the material you submitted as responsive to the request, we have already permitted you to withhold under the attorney-client privilege, section 552.107(1). None of the other information may be withheld as work product.

²We are unsure whether you intended to submit this document, a letter to the Attorney General from J. Robert Giddings, as information responsive to the request, or as supporting material for your arguments. If you consider it responsive, you may, again, withhold it under section 552.107(1).

Similarly, we have already determined that you may withhold under the attorney-client privilege the material for which exception might be had under section 552.111. The factual material in the attorney-client communications which we did not permit withholding under your section 552.107 claim can not be withheld under section 552.111 either. *See* Open Records Decision No. 615 (1993). Thus, none of the information you submitted may be withheld under section 552.111.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref: ID# 119392

Enclosures: Submitted documents

cc: Mr. Stephen N. Lisson
Initiate !!
P.O. Box 2013
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(w/o enclosures)